

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9112 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

K V RAO CHHIKNIWALA

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners

MR PB MAJMUDAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 09/11/98

ORAL JUDGEMENT

1. Rule. Mr. R.J. Oza for Mr. P.B. Majmudar appears on behalf of the respondents and waives service of Rule. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed against non-action on the

part of the Appellate Authority in not deciding stay application on the one hand and, on the other hand, the respondent authorities are taking coercive action for recovery of Central Excise. As state in the petition itself, appeal is pending and stay application is also pending before the Commissioner of Central Excise and Customs (Appeals).

3. Learned counsel for the petitioner submitted that the point is concluded by a decision of a Division Bench in D.C.W. v. Commissioner (Appeals) and Others., 1997(2) GLR 913. In that case, the Division Bench observed that when appeal is pending and stay application is not decided, no coercive recovery proceedings should be taken by the department. In D.C.W, therefore, the Court directed the Tribunal to decide application for stay and till then it was ordered not to take coercive recovery proceedings by the authority against the petitioner.

4. In our opinion, the point is concluded by the above decision and the petition, therefore, deserves to be allowed and is, accordingly, allowed. The Appellate Authority will decide application for stay as expeditiously as possible, preferably within six weeks from today. But till the application for stay is decided, no proceedings for coercive recovery will be initiated against the petitioner. Petition is allowed to the extent as indicated above. Rule made absolute accordingly with no order as to costs. Direct service permitted.

...

gt